

EXHIBIT A

Page 1

1

2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF DELAWARE

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5 JEFFREY M. NORMAN,

6 Plaintiff,

7 vs.

8 DAVID W. ELKIN, RICHARD M.

SHORIN and THE ELKIN GROUP,

9 INC.,

10 Defendants.

11 and

12 US MOBILCOMM, INC.,

13 Nominal Defendant.

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17 DEPOSITION OF JEFFREY M. NORMAN

18 New York, New York

19 Friday, December 8, 2006

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24 Reported by:

LESLIE FAGIN

25 JOB NO.9289

<p style="text-align: right;">Page 2</p> <p>1 2 December 8, 2006 3 7:59 a.m. 4 5 Videotaped Deposition of JEFFREY M. 6 NORMAN, held at the offices of Blank 7 Rome, 405 Lexington Avenue, New York, New 8 York, pursuant to Notice and Federal 9 Rules of Civil Procedure, before Leslie 10 Fagin, a Notary Public of the State of 11 New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between the attorneys for the 4 respective parties herein, that filing 5 and sealing be and the same are hereby 6 waived. 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to the 9 form of the question, shall be reserved 10 to the time of the trial. 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be sworn 13 to and signed before any officer 14 authorized to administer an oath, with 15 the same force and effect as if signed 16 and sworn to before the Court. 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 COZEN O'CONNOR 5 Attorneys for Plaintiff 6 Suite 1400 7 Chase Manhattan Centre 8 1201 North Market Street 9 Wilmington, Delaware 19801-1147 10 BY: DAVID A. FELICE, ESQ. 11 12 MARK A. EVETTS, ESQ. 13 Attorneys for Defendants 14 8502 Jackson Creek Bend Lane 15 Houston, Texas 77396 16 17 ALSO PRESENT: 18 PETER LEDWITH, Videographer 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 2 THE VIDEOGRAPHER: Here begins 3 videotape No. 1 in the deposition of 4 Jeffrey Norman in the matter of Norman 5 versus Elkin in the U.S. District Court, 6 District of Delaware. 7 Today's date is December 8, 2006. 8 The time is 7:59 a.m. 9 This deposition is being taken at 10 Blank Rome, 405 Lexington Avenue, New 11 York, New York, made at the request of 12 Mark Evetts of the law offices of Mark 13 Evetts. 14 The videographer is Peter Ledwith 15 on behalf of Esquire Deposition Services 16 located 216 East 45th Street, New York, 17 New York. 18 Would counsel and all present 19 please identify themselves. 20 MR. EVETTS: Mark Evetts. I 21 represent Mr. David Elkin, Richard 22 Shorin, The Elkin Group, the defendants. 23 MR. FELICE: David Felice of Cozen 24 O'Connor representing the plaintiff, 25 Jeffrey Norman.</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 J. Norman</p> <p>2 JEFFREY M. NORMAN, called as a</p> <p>3 witness, having been duly sworn by a</p> <p>4 Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. EVETTS:</p> <p>8 Q. Would you please state your full</p> <p>9 name for the record?</p> <p>10 A. Jeffrey Moore Norman.</p> <p>11 Q. Mr. Norman, when do you contend Mr.</p> <p>12 Elkin breached his agreement with you to</p> <p>13 invest \$750,000 in USM?</p> <p>14 A. When I discovered that he had not</p> <p>15 funded the company according to our original</p> <p>16 agreement.</p> <p>17 MR. EVETTS: Objection. Not</p> <p>18 responsive.</p> <p>19 Q. The question wasn't when did you</p> <p>20 discover, the question was when did he breach</p> <p>21 it. That is, when, in your opinion, based on</p> <p>22 the agreement you contend existed in this</p> <p>23 case, when was he obligated to invest</p> <p>24 \$750,000 and when did he fail to fulfill that</p> <p>25 obligation?</p>	<p style="text-align: right;">Page 8</p> <p>1 J. Norman</p> <p>2 testimony, breached his agreement to invest</p> <p>3 his equity into USM by the fall of 1994, is</p> <p>4 that fair?</p> <p>5 MR. FELICE: Objection as to form.</p> <p>6 A. Well, I would call it that he</p> <p>7 breached his commitment to contribute his</p> <p>8 money that I understood would be happening at</p> <p>9 the time that I contributed the money.</p> <p>10 Q. And that breach occurred by the</p> <p>11 fall of 1994?</p> <p>12 A. By the fall of --</p> <p>13 Q. I'm doing that. I know you put in</p> <p>14 your money June 2, 1994. I think your</p> <p>15 testimony was you expected him to put up his</p> <p>16 money contemporaneous or within a reasonable</p> <p>17 period of time after that, so I'm tacking on</p> <p>18 three or four months.</p> <p>19 A. That's true.</p> <p>20 Q. So by the fall of 1994, Mr. Elkin</p> <p>21 breached his commitment to put in his</p> <p>22 investment in USM, is that right?</p> <p>23 MR. FELICE: Objection as to form.</p> <p>24 A. In my mind, I don't know the legal</p> <p>25 terminology, but in my mind, as a</p>
<p style="text-align: right;">Page 7</p> <p>1 J. Norman</p> <p>2 MR. FELICE: Objection. Compound.</p> <p>3 Q. Let's start with the first one.</p> <p>4 When was he obligated, under the</p> <p>5 oral agreement you're suing under in this</p> <p>6 lawsuit, to invest \$750,000?</p> <p>7 A. At the time that I contributed my</p> <p>8 portion.</p> <p>9 Q. And I've got a document here that</p> <p>10 will reflect this, but would you agree with</p> <p>11 me that that was then around June 2, 1994?</p> <p>12 A. I contributed my \$250,000 at that</p> <p>13 particular time, yes.</p> <p>14 Q. And so it is your contention that</p> <p>15 Mr. Elkin's obligation to contribute \$750,000</p> <p>16 was due and ripe at that moment?</p> <p>17 A. It was my understanding at that --</p> <p>18 based on our conversation that when I put in</p> <p>19 my contribution, he was going to put in his</p> <p>20 contribution, if not that day, then within a</p> <p>21 reasonable amount of time.</p> <p>22 Q. A reasonable amount of time being</p> <p>23 within a month, two, three months?</p> <p>24 A. That was my understanding, yes.</p> <p>25 Q. And so Mr. Elkin, by your</p>	<p style="text-align: right;">Page 9</p> <p>1 J. Norman</p> <p>2 businessman, yes.</p> <p>3 Q. Okay. And you knew by the fall of</p> <p>4 1994 that Mr. Elkin hadn't put up his</p> <p>5 750,000, didn't you?</p> <p>6 A. I don't remember the exact date,</p> <p>7 but I discovered a few months after that,</p> <p>8 when he didn't volunteer it to me, but I</p> <p>9 asked him if he contributed his money and he</p> <p>10 told me no, but he was going to be doing it</p> <p>11 shortly.</p> <p>12 Q. And when was the next time you</p> <p>13 became aware that he didn't live up to that</p> <p>14 representation or that promise?</p> <p>15 A. Well, after that point in time,</p> <p>16 I -- it was a long time ago, but, so I can't</p> <p>17 give you an exact date, but I remember during</p> <p>18 that time period that I might have seen a</p> <p>19 selective document that had a capital</p> <p>20 contribution chart that, you know, that</p> <p>21 didn't show him putting in the money. I</p> <p>22 don't know -- I never actually got any kind</p> <p>23 of documentation ever to this day, no cash</p> <p>24 check statements or anything that -- of what</p> <p>25 money was put in by Mr. Elkin.</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 14</p> <p>1 J. Norman</p> <p>2 with, so on an overriding basis, I didn't</p> <p>3 feel as though he had, in my mind, breached</p> <p>4 our entire agreement. It was maybe the</p> <p>5 capital contribution part.</p> <p>6 Q. I want to get back to that</p> <p>7 response, in particular, your</p> <p>8 characterization of an entire agreement.</p> <p>9 I want to understand what that</p> <p>10 means, but before I get there, was there ever</p> <p>11 a moment in time when your relationship had</p> <p>12 developed to the point that you subjectively</p> <p>13 believed he had not lived up, Mr. Elkin had</p> <p>14 not lived up to his promise?</p> <p>15 MR. FELICE: Objection. Asked and</p> <p>16 answered.</p> <p>17 A. In our business relationship you're</p> <p>18 talking about?</p> <p>19 Q. Let's make this simple. I'm going</p> <p>20 to be talking today about each of your causes</p> <p>21 of action.</p> <p>22 As far as I can recall, your first</p> <p>23 cause of action is breach of contract, so</p> <p>24 right now, all we're talking about is</p> <p>25 whatever, let's get this straight, there is</p>	<p style="text-align: right;">Page 16</p> <p>1 J. Norman</p> <p>2 A. At that particular point in time,</p> <p>3 at that moment in time, I felt, in my mind,</p> <p>4 that from a business point of view, he didn't</p> <p>5 live up to our agreement, our oral agreement</p> <p>6 of putting in money.</p> <p>7 As far as our overall business</p> <p>8 contract or arrangement, whatever you want to</p> <p>9 call it, I felt that predominantly, that the</p> <p>10 business arrangement was positive enough to</p> <p>11 continue.</p> <p>12 Q. So I think I understand from your</p> <p>13 answer you're standing on your testimony that</p> <p>14 you understood by the fall of '94 or very,</p> <p>15 very early part of '95, he had at least</p> <p>16 breached the part of your oral agreement to</p> <p>17 invest his money?</p> <p>18 A. That's correct.</p> <p>19 Q. Now, let's talk about the agreement</p> <p>20 in its entirety.</p> <p>21 What are the components of this</p> <p>22 oral agreement, what were the mutual</p> <p>23 promises?</p> <p>24 A. Mr. Elkin, I had an ongoing</p> <p>25 business in New York with a gentleman Mr. Tom</p>
<p style="text-align: right;">Page 15</p> <p>1 J. Norman</p> <p>2 no writing for your oral contract, nobody</p> <p>3 signed a contract?</p> <p>4 A. That's correct.</p> <p>5 Q. So it's breach of an oral contract,</p> <p>6 right?</p> <p>7 A. Right.</p> <p>8 Q. And so an oral contract is proved</p> <p>9 up by whatever you two gentlemen say that</p> <p>10 agreement is, right?</p> <p>11 A. Correct.</p> <p>12 Q. Right now, you're the guy saying</p> <p>13 what it is?</p> <p>14 A. Uh-huh.</p> <p>15 Q. So I'm asking you, based on the</p> <p>16 oral agreement you contend was breached, was</p> <p>17 there a moment in time when you realized Mr.</p> <p>18 Elkin had failed to live up to his end of the</p> <p>19 bargain under that oral agreement?</p> <p>20 MR. FELICE: Objection to form.</p> <p>21 A. Are you talking about the capital</p> <p>22 contribution part of the agreement?</p> <p>23 Q. I'm talking about the oral</p> <p>24 agreement you allege Mr. Elkin is in breach</p> <p>25 of.</p>	<p style="text-align: right;">Page 17</p> <p>1 J. Norman</p> <p>2 Fiorita, offices on 1330 Avenue of the</p> <p>3 Americas. The company was doing maybe 650 to</p> <p>4 a million dollars a year in revenue.</p> <p>5 Mr. Elkin approached me and wanted</p> <p>6 to get together. He had just sold his cable</p> <p>7 operation and had a concept about securing</p> <p>8 some licenses in the last lottery spectrum.</p> <p>9 He said, let's get together and I believe he</p> <p>10 came to the Plaza Hotel in New York, let's</p> <p>11 get together and he said, here is my idea,</p> <p>12 that there is last lottery part of the</p> <p>13 auction, 220 spectrum, let's put together a</p> <p>14 company and aggregate licenses together. The</p> <p>15 split will be – this is basically the first</p> <p>16 time we met, 25 percent, 75 percent.</p> <p>17 At that particular time, I don't</p> <p>18 recall a capital figure and this is probably</p> <p>19 early 1993, maybe even late 1992, we had this</p> <p>20 conversation in New York. No capital was</p> <p>21 really discussed except for the fact you are</p> <p>22 going to contribute 25 percent and I will be</p> <p>23 responsible for 75 percent and the discussion</p> <p>24 was primarily my job was going to be go out</p> <p>25 and put together marketing plans, to secure</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 J. Norman</p> <p>2 the licenses, figure out how to maybe</p> <p>3 strategize in terms of aggregate for a</p> <p>4 marketing pattern to create value.</p> <p>5 Mr. Elkin's responsibilities, as he</p> <p>6 relayed to me, as an attorney, he was going</p> <p>7 to be able to handle the legal stuff.</p> <p>8 Also with his financing background,</p> <p>9 that he was going to raise capital for the</p> <p>10 project and as his, you know, as an ex-chief</p> <p>11 operating officer, he was also going to</p> <p>12 handle that responsibility for the company</p> <p>13 and that was our basic understanding.</p> <p>14 The second piece of that is time --</p> <p>15 so it was decided at that point in time,</p> <p>16 basically within a month or two, do you want</p> <p>17 to work on that project? I said, yes, he</p> <p>18 understood I had another business, so I was</p> <p>19 allocating time to this project and as time</p> <p>20 went on throughout 1993, things evolved in</p> <p>21 formulating the industry, I can't recall</p> <p>22 whether the options took place then, but, you</p> <p>23 know, the plan to aggregate the license with</p> <p>24 cities to go after and then by the end of the</p> <p>25 year, we started rough discussions about --</p>	<p style="text-align: right;">Page 20</p> <p>1 J. Norman</p> <p>2 Q. So you had this agreement that you</p> <p>3 would co-own USM in the ratio of 75/25,</p> <p>4 right?</p> <p>5 A. Right.</p> <p>6 Q. You had an agreement that the two</p> <p>7 of you, I'm not going to try to summarize all</p> <p>8 the different skill sets Mr. Elkin has versus</p> <p>9 your skill sets, but, essentially, you guys</p> <p>10 have an agreement that you would co-operate</p> <p>11 USM?</p> <p>12 MR. FELICE: Objection as to form.</p> <p>13 Q. Based on each of your respective</p> <p>14 skill sets?</p> <p>15 A. I did operations, but I wasn't --</p> <p>16 my job was to secure the licenses.</p> <p>17 Q. I'm not trying to use a term of art</p> <p>18 here. I'm just talking about you were going</p> <p>19 to both run the business?</p> <p>20 A. In a loose sense, you could say</p> <p>21 that.</p> <p>22 Q. And, eventually, there was an</p> <p>23 addendum to that agreement or a</p> <p>24 supplementation to that agreement where the</p> <p>25 amount of necessary capital was settled upon</p>
<p style="text-align: right;">Page 19</p> <p>1 J. Norman</p> <p>2 primarily he did, what type of capital was</p> <p>3 going to be needed and as I recall, the first</p> <p>4 figure was less than a million dollars when I</p> <p>5 signed on board, so it was also understood</p> <p>6 that at that particular time, money that we</p> <p>7 had put out for the business was going to be</p> <p>8 counted towards our capital contribution and</p> <p>9 that, I think, is a basis for our -- what was</p> <p>10 the basis for our agreement.</p> <p>11 Q. I'm going to try to kind of parse</p> <p>12 through that. These are sort of the terms or</p> <p>13 elements that I heard.</p> <p>14 Initially, no agreement about how</p> <p>15 much money -- the initial agreement was about</p> <p>16 just respective ownership percentages, 75/25?</p> <p>17 A. I don't know I would call it an</p> <p>18 agreement at that point in time. I would</p> <p>19 call it Mr. Elkin's proposal.</p> <p>20 Q. I heard from your answer that you</p> <p>21 reached an agreement on the 25/75 before you</p> <p>22 ever even knew how much money would be</p> <p>23 associated with that?</p> <p>24 A. Yeah, he might have thrown a figure</p> <p>25 out, we will put in half a million dollars.</p>	<p style="text-align: right;">Page 21</p> <p>1 J. Norman</p> <p>2 at a million, was that about right?</p> <p>3 A. That's right.</p> <p>4 Q. Was there any discussions in this</p> <p>5 agreement about sort of how long you would</p> <p>6 both be obligated to run the business, i.e.,</p> <p>7 a year, two, 10?</p> <p>8 A. No.</p> <p>9 Q. Was there any understanding as to</p> <p>10 what would happen if one of you quit running</p> <p>11 the business, but the other guy continued</p> <p>12 running the business?</p> <p>13 A. No.</p> <p>14 Q. Was there any discussions about how</p> <p>15 long either or both of you could work without</p> <p>16 receiving any compensation from the company?</p> <p>17 A. Was there any discussions about</p> <p>18 that? Potentially, possibly, it seems like</p> <p>19 something that might have -- we might have</p> <p>20 talked about, but I don't recall any details</p> <p>21 of that.</p> <p>22 Q. Just so the jury is clear, as far</p> <p>23 as the agreement we've just described, there</p> <p>24 was no discussion about who was going to get</p> <p>25 paid what, nobody was getting paid?</p>

6 (Pages 18 to 21)

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1 J. Norman
 2 A. It doesn't cure the fact that he
 3 breached it when he was supposed to put it
 4 in.
 5 Q. But that's a breach that took place
 6 now 11 years ago, right?
 7 MR. FELICE: Objection as to form.
 8 A. At that particular time, yeah.
 9 Q. You do know, whether you know it or
 10 not, you're charged with knowing it, do you
 11 know the statute of limitations has run years
 12 and years and years ago on that --
 13 MR. FELICE: Objection as to form.
 14 If you have a question, he can answer.
 15 If it doesn't call for legal conclusion,
 16 you can ask it.
 17 MR. EVETTS: He has constructive
 18 knowledge of the law, every word
 19 written.
 20 Q. Do you know the statute of
 21 limitations has run on breach of contract?
 22 MR. FELICE: Objection as to form.
 23 Calls for legal conclusion.
 24 Q. He is not instructing you not to
 25 answer, so you have to answer.

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1 J. Norman
 2 A. Do I know that? You just told me
 3 that. I know you're a good attorney.
 4 Q. You've been involved in some
 5 lawsuits, you know what a statute of
 6 limitations is?
 7 MR. FELICE: Let's move on. If you
 8 want to tell him what it is, that's
 9 fine, but you're asking for a legal
 10 conclusion.
 11 Q. Look, a client who brings a lawsuit
 12 not only is on constructive knowledge of the
 13 statute of limitations, they have a duty to
 14 know when the statute of limitations runs.
 15 MR. FELICE: Objection as to form.
 16 Q. Otherwise it's a malicious
 17 prosecution, if you bring a lawsuit with no
 18 basis under the law, you can be sued for
 19 that.
 20 MR. FELICE: Objection as to form.
 21 Don't answer. He is calling for
 22 disclosure of attorney/client privilege.
 23 Q. From your understanding of statute
 24 of limitations and causes of action, you
 25 don't have any idea that your 11 year old

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1 J. Norman
 2 breach of contract --
 3 Mr. FELICE: Objection as to form.
 4 Calls for attorney/client privilege.
 5 Don't answer that.
 6 Q. Are you going to follow your
 7 counsel's instruction?
 8 MR. FELICE: I just instructed him
 9 not to answer. Move on.
 10 MR. EVETTS: Don't tell me what to
 11 do, Mr. Felice. I've been taking
 12 depositions when you were a senior in
 13 high school.
 14 Q. Are you going to follow your
 15 counsel's instructions?
 16 A. Yes, sir.
 17 MR. FELICE: Don't badger my
 18 client.
 19 Q. Isn't it true, Mr. Norman, you also
 20 knew, you say it happened by happenstance,
 21 but you learned that USM had sold licenses
 22 from Mr. Elkin, isn't that right?
 23 A. Yes.
 24 Q. You learned it because you called
 25 him on the phone and you asked him, right?

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1 J. Norman
 2 A. No, I didn't ask -- well, I guess
 3 over time I did. I called him because I
 4 hadn't heard anything and it was probably
 5 over a year. Any information, despite some
 6 requests, and I was driving in Pennsylvania
 7 for business one day and I said I'm going to
 8 call him up and see what's going on, haven't
 9 heard anything, haven't gotten any
 10 information, I get him on the telephone,
 11 after the pleasantries, I said, what is going
 12 on with the company? He said, nothing, and
 13 it was like an interrogation. I said, do we
 14 still have all our licenses? He said, well,
 15 no, and then I said, did we sell any
 16 licenses, and he said, yes, and I said,
 17 where? Oh, I think we sold a couple in Miami
 18 and in Boston. I said, well, how much did we
 19 get? I don't recall exactly, a few hundred
 20 thousand dollars. Then I said, did you take
 21 a distribution, and he said, yes, I did. I
 22 said, how come you didn't tell me about it?
 23 He said, it wasn't your turn, and I said, why
 24 don't you send me the information you got?
 25 He said, okay. Hung up the phone, didn't

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 J. Norman</p> <p>2 hear anything from him.</p> <p>3 Q. And didn't that occur in like early</p> <p>4 2000?</p> <p>5 A. It occurred right before Mr. Sama</p> <p>6 sent him a letter.</p> <p>7 Q. Right before?</p> <p>8 A. Shortly before. I can't recall the</p> <p>9 exact timing of it. I called Mr. Sama up to</p> <p>10 tell him about it.</p> <p>11 Q. You know that Mr. Sama's letter</p> <p>12 went to Mr. Elkin in October 2002?</p> <p>13 A. I would like to see it to refresh</p> <p>14 my memory. I haven't looked at that stuff in</p> <p>15 a year.</p> <p>16 Q. You don't know that?</p> <p>17 A. I want to say yes, but I don't want</p> <p>18 to say something that -- can I ask Mr. Felice</p> <p>19 if that's true?</p> <p>20 THE WITNESS: Is that true?</p> <p>21 MR. FELICE: What was the question?</p> <p>22 Q. You know Mr. Sama's letter went to</p> <p>23 Mr. Elkin in October 2002?</p> <p>24 A. I want to say yes.</p> <p>25 MR. FELICE: I believe it's that</p>	<p style="text-align: right;">Page 68</p> <p>1 J. Norman</p> <p>2 A. I don't even think he told me who</p> <p>3 he sold them to.</p> <p>4 Q. But you know today?</p> <p>5 A. Yes.</p> <p>6 Q. And in the same conversation he</p> <p>7 told you about the Romer transaction?</p> <p>8 MR. FELICE: Objection.</p> <p>9 A. He told me we got rid of some</p> <p>10 licenses in Miami and Boston and it was a</p> <p>11 couple hundred thousand dollars, I believe</p> <p>12 were his words.</p> <p>13 Q. And so we're clear about when that</p> <p>14 conversation took place, do you recall a</p> <p>15 trial in a related case in the 220 action?</p> <p>16 A. The one you talked about earlier</p> <p>17 today, the Warren trial.</p> <p>18 Q. I'm talking about the trial before</p> <p>19 I was involved in this case, the 220 action</p> <p>20 in the Vice Chancellor --</p> <p>21 A. Sure.</p> <p>22 Q. You remember that trial?</p> <p>23 A. Sure I do.</p> <p>24 Q. You remember you testified at the</p> <p>25 trial?</p>
<p style="text-align: right;">Page 67</p> <p>1 J. Norman</p> <p>2 time.</p> <p>3 A. I will say that.</p> <p>4 Q. Now that you know that, it's your</p> <p>5 testimony this conversation with Mr. Elkin</p> <p>6 took place shortly before that, is that</p> <p>7 right?</p> <p>8 A. Yeah, I don't know how far in</p> <p>9 advance, but it was before that, yes.</p> <p>10 Q. Shortly before that?</p> <p>11 A. I don't know. To be honest with</p> <p>12 you, I'm just guessing.</p> <p>13 Actually, it might have been. I</p> <p>14 don't think I would -- I would give Mr.</p> <p>15 Elkin, knowing me, I probably gave him more</p> <p>16 than enough time to produce it and it</p> <p>17 actually might have been a while before that</p> <p>18 now that I think back on it, where I got up</p> <p>19 my -- I got pissed off enough where I said,</p> <p>20 he is still not sending me anything and I</p> <p>21 just had it with all the requests and no</p> <p>22 response and that's when I went to Mr. Sama.</p> <p>23 Q. And in that same conversation, you</p> <p>24 learned about the Repeater transaction,</p> <p>25 right?</p>	<p style="text-align: right;">Page 69</p> <p>1 J. Norman</p> <p>2 A. I remember I testified at the</p> <p>3 trial.</p> <p>4 Q. I will try to refresh your</p> <p>5 recollection of how long before the Sama</p> <p>6 letter went out that you talked to Mr. Elkin.</p> <p>7 Here is the question. This is page</p> <p>8 167, line 11:</p> <p>9 What were your reasons for having</p> <p>10 this letter delivered to the company?</p> <p>11 Your answer: I have been</p> <p>12 unsuccessful in getting any kind of</p> <p>13 information that was satisfactory to me,</p> <p>14 dated October, probably for the previous 24</p> <p>15 months and actually prior to that, I had</p> <p>16 discovered there was a sale of assets that,</p> <p>17 you know, I kind of discovered by</p> <p>18 happenstance and apprised Mr. Elkin on that.</p> <p>19 Do you recall that you learned</p> <p>20 about the sale of the assets more than 24</p> <p>21 months before the Sama letter went out?</p> <p>22 A. I don't know. That doesn't</p> <p>23 sound -- that paragraph there, to be honest</p> <p>24 with you, as I sit here today, I can't tell</p> <p>25 you the exact time that I called him.</p>

18 (Pages 66 to 69)

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1 J. Norman
 2 Q. Where could we look --
 3 A. Twenty-four months.
 4 Q. Do you have notes at home of the
 5 conversation where Mr. Elkin told you he sold
 6 the licenses --
 7 A. Actually, I probably could track it
 8 back because I was doing some work for a
 9 technology company that was out of the other
 10 part of Pennsylvania, so I would have to go
 11 to my diaries and maybe I can track it back
 12 looking at e-mails about meetings out in that
 13 part of the state because I didn't go out
 14 there a lot.
 15 Q. Based on when you knew you worked
 16 for the technology company, can you give us a
 17 better estimate of when you had that
 18 conversation with Mr. Elkin?
 19 A. I would have to check my diaries to
 20 pin it down, but I know the sequence was I
 21 talked to him on the telephone, I didn't get
 22 the document, I went to Mr. Sama.
 23 Q. Here is what you say at the 220
 24 trial. The question was --
 25 MR. FELICE: What page are you on?

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1 J. Norman
 2 MR. EVETTS: I'm on page 192.
 3 Q. Just to put it in context, this is
 4 when the cross-examination first began after
 5 Mr. Felice passed the witness.
 6 Good afternoon, Mr. Norman. My
 7 name is Elizabeth Wilburn.
 8 You responded, hi.
 9 She asked you the very same
 10 question I asked you, Mr. Norman, the demand
 11 letter in this case is dated -- this is your
 12 later demand letter, October 2004?
 13 A. This says 2004. I think we sent
 14 two, I think we sent two demand letters.
 15 Q. You sent a demand letter --
 16 A. There was some legal thing, I had
 17 to send one and then he also sent one, so I
 18 think there were two. As I recall there were
 19 two letters because we didn't get -- in the
 20 first demand letter, we didn't get -- in our
 21 minds, enough information and that's what
 22 kind of triggered the whole thing and as I
 23 recall, there were -- Mr. Sama sent him a
 24 couple of letters and then there was a formal
 25 demand letter that went out.

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1 J. Norman
 2 Q. If you talked to Mr. Elkin any time
 3 before the then Sama letter went out, which I
 4 think is uncontroverted you did?
 5 A. That's true.
 6 Q. And he revealed he had sold
 7 licenses and he revealed to you what you now
 8 know are the Repeater and Romer transactions,
 9 right?
 10 A. I don't recall the names of the
 11 companies he sold them to, but I remember he
 12 said he got rid of some licenses, sold some
 13 license.
 14 Q. He told you in that same
 15 conversation that he had made a distribution
 16 to himself, right, and you certainly knew --
 17 A. I don't know if he used the word
 18 distribution, but I asked him if money was
 19 distributed and I didn't get any and there
 20 are own two shareholders.
 21 Q. You knew you didn't get any?
 22 A. Exactly.
 23 Q. Mr. Sama's letter went out more
 24 than three years before you filed this
 25 lawsuit. It is uncontroverted you knew,

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1 J. Norman
 2 prior to that, sometime prior to that, that
 3 Mr. Elkin sold licenses and made a
 4 distribution, if I represent to you the
 5 longest statute of limitations available to
 6 you, and I don't think that it will even
 7 apply is three years, how aren't all those
 8 claims barred by the statute of limitations?
 9 MR. FELICE: Objection. Calls for
 10 legal conclusion.
 11 A. That's a legal conclusion that I
 12 guess will be answered. All I know is from
 13 my point of view is he told me I couldn't get
 14 the information from him and that was, I
 15 think, evident in a lot of these things we've
 16 been talking about for Mr. Elkin.
 17 Stretch, stretch, stretch. Give as
 18 little as possible, hedge the bet and not
 19 provide. Instead, most business situations
 20 I'm in, you ask the question, yeah, sure, I
 21 sold Miami 10 licenses, it was -- I know he
 22 remembered exactly what he did. He has got a
 23 mind for that. I sold it for 350, whatever
 24 the sale price was, I sold the other one 10
 25 licenses for X and it was closed on this day,

19 (Pages 70 to 73)

Page 78

1 J. Norman
2 assets it owned were licenses, right?
3 MR. FELICE: Objection as to form.
4 A. Right.
5 Q. So if there is a capital gain, by
6 definition, it has to be sale of a license?
7 MR. FELICE: Objection as to form.
8 A. Yeah.
9 Q. Let's take a look. I'm going to
10 hand you what was previously marked PX-7.
11 This is a copy of the US Mobilcomm, Inc.'s
12 2000 tax return.
13 If you'll look at the K-1 for you,
14 which is Bates stamped MC 543, the second to
15 last page.
16 Do you see that?
17 A. MC 543, I'm looking at it.
18 Q. That's your K-1?
19 A. Yeah.
20 Q. You received it?
21 A. Yeah.
22 Q. You probably received that around
23 March 2001?
24 A. That's when it's supposed to be
25 sent out, yeah.

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1 J. Norman
2 Q. Did you normally get them when they
3 were supposed to be sent out?
4 A. Sometimes I didn't, actually.
5 Q. This is a bad year because this is
6 one of the few years that you had to actually
7 pay income taxes on ordinary income.
8 Do you see?
9 A. Yes.
10 Q. But this is a doubly bad year
11 because you also have a net long term capital
12 gain, don't you?
13 A. Where does it say that?
14 Q. Next to the biggest number on the
15 page.
16 A. Are we looking -- 16,000 total for
17 the year?
18 Q. Yeah.
19 A. Okay, yeah.
20 Q. So the minute you received this,
21 given that it imposed whatever your personal
22 tax rate is on that ordinary income, plus
23 whatever the capital gains tax rate is, this
24 is a bad year for you, you have to pay --
25 I've seen plenty of years where you had a

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1 J. Norman
2 major benefit from owning your stock in US
3 Mobilcomm, you had an ordinary loss, right?
4 A. Yeah, a lot of years.
5 Q. But this a bad year because you
6 have to pay, double, you have to pay taxes on
7 two different line items, so you knew the
8 minute you received this, that US Mobilcomm
9 had sold licenses, didn't you?
10 MR. FELICE: Objection as to form.
11 A. No, I guess so if I look at it now,
12 but I think you're overdramatizing the effect
13 on my reaction to it when I got it. I think
14 I just put it in the stack with my accounting
15 stuff for the tax guy. I didn't jump on the
16 phone right away and say, oh, my God, we sold
17 all the licenses of the company, let me find
18 out what's going on.
19 Q. You may call it overdramatization,
20 but I've got news for you, statute of
21 limitations, accruals, causes of action,
22 sometimes it doesn't even matter if you know,
23 but if there a chance for you to know, i.e.,
24 tax returns showing taxable income from the
25 sale of licenses, whether you actually dawned

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1 J. Norman
2 on you or not, you knew?
3 MR. FELICE: Objection to form. If
4 you have a question, you can ask him a
5 question. Stop badgering my witness.
6 Q. Did you have a response to that?
7 MR. FELICE: Is there a question?
8 A. I didn't know when I read this tax
9 return. Maybe I was supposed to, but I did
10 not know.
11 THE WITNESS: Can we take a break
12 at some point in time.
13 MR. EVETTS: Right now.
14 THE VIDEOGRAPHER: The time is 9:23
15 a.m. We're off the record.
16 (Recess.)
17 THE VIDEOGRAPHER: 9:33. On the
18 record.
19 Q. Back to your claims, Mr. Norman, of
20 the breach of contract. I want to go back to
21 the first one, failing and refusing to
22 provide Norman with complete access to USM's
23 corporate business financial accounting books
24 and records.
25 By what date did Mr. Elkin breach

21 (Pages 78 to 81)

<p style="text-align: right;">Page 94</p> <p>1 J. Norman</p> <p>2 facts.</p> <p>3 MR. EVETTS: That is appropriate to</p> <p>4 assume certain facts. Do you not know</p> <p>5 that?</p> <p>6 MR. FELICE: You are saying, assume</p> <p>7 that US Mobilecomm didn't have that. If</p> <p>8 you want to take the oath and testify,</p> <p>9 go ahead. If you want to put a document</p> <p>10 in front of him, go ahead.</p> <p>11 Q. If USM -- how was USM ready to</p> <p>12 participate in auction 18 if it lacked the</p> <p>13 finances to make the required upfront payment</p> <p>14 to the FCC? Just tell the jury that, simple</p> <p>15 question.</p> <p>16 A. There were a lot of variables</p> <p>17 involved with the auction and give me the</p> <p>18 date for that again.</p> <p>19 Q. The auction?</p> <p>20 A. Yes.</p> <p>21 Q. September 18, 1998.</p> <p>22 A. I wasn't involved with the company</p> <p>23 at that point in time and I hadn't gotten any</p> <p>24 documents after I left, so it was my</p> <p>25 assumption, because I had no communication</p>	<p style="text-align: right;">Page 96</p> <p>1 J. Norman</p> <p>2 document from USM?</p> <p>3 A. I'm saying I don't know if I did.</p> <p>4 Q. You didn't look at it, you just</p> <p>5 sent it onto Mark Hatten?</p> <p>6 A. I probably would have looked at it.</p> <p>7 Q. You're sitting there telling me</p> <p>8 your big complaint is you can't get enough</p> <p>9 financial information. Now, you get a</p> <p>10 full-blown balance sheet and P&L and you're</p> <p>11 not going to study it a little bit?</p> <p>12 A. I don't know if it was or not. I</p> <p>13 would have to look at it. I remember seeing</p> <p>14 something the other day from the exhibits,</p> <p>15 something for Mark Hatten, a fax. There was</p> <p>16 some financial information. It's still</p> <p>17 regarding my answer to the auction. I don't</p> <p>18 agree with your supposition.</p> <p>19 Q. My supposition is very simple. If</p> <p>20 USM didn't have any money, was it ready to</p> <p>21 participate in the auction?</p> <p>22 MR. FELICE: Objection as to form.</p> <p>23 A. I didn't believe that to be the</p> <p>24 case.</p> <p>25 Q. I didn't ask you whether you</p>
<p style="text-align: right;">Page 95</p> <p>1 J. Norman</p> <p>2 when I left, the company was ready for the</p> <p>3 auction.</p> <p>4 Q. What do you mean you hadn't gotten</p> <p>5 any documents after you left? You know now,</p> <p>6 from reviewing documents, that there were</p> <p>7 contracts, financial statements, lists of</p> <p>8 licenses, lists of equipment being</p> <p>9 transferred from USM to Centennial with blind</p> <p>10 copies going to Vincent Sama. We had Vincent</p> <p>11 Sama editing purchase agreements. You know</p> <p>12 there were tons of documents regarding USM</p> <p>13 financial condition that you were privy to.</p> <p>14 A. The documents, we only got the</p> <p>15 purchase and sale agreement from Mr. Elkin,</p> <p>16 we didn't get any -- the financial documents</p> <p>17 you're describing.</p> <p>18 Q. When you were acting as liaison</p> <p>19 between USM and Mark Hatten in the fall of</p> <p>20 1998, you weren't getting financial documents</p> <p>21 then?</p> <p>22 A. I think I might have gotten one</p> <p>23 that I just sent to Mr. Hatten. You would</p> <p>24 have to show it to me.</p> <p>25 Q. You're saying you got a financial</p>	<p style="text-align: right;">Page 97</p> <p>1 J. Norman</p> <p>2 believed that to be the case.</p> <p>3 I asked you, if USM did not have</p> <p>4 any money, could it have participated in the</p> <p>5 auction?</p> <p>6 MR. FELICE: Objection. Form.</p> <p>7 Foundation.</p> <p>8 A. Probably.</p> <p>9 Q. What?</p> <p>10 A. Probably, it could have.</p> <p>11 Q. Let's talk about that. Let me ask</p> <p>12 you something else, too.</p> <p>13 Are you taking a position in this</p> <p>14 lawsuit that -- let me start back, scratch on</p> <p>15 that.</p> <p>16 You followed USM and some of its</p> <p>17 progress through the FCC, right?</p> <p>18 A. Through the FCC auction, the</p> <p>19 auction 18, I did.</p> <p>20 Q. You had some testimony, and I've</p> <p>21 got some documents here that say I've been</p> <p>22 following the document through the FCC</p> <p>23 website.</p> <p>24 A. I followed auction 18 through the</p> <p>25 FCC, yes, I did.</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 J. Norman</p> <p>2 Q. So you knew that USM was a</p> <p>3 qualified bidder?</p> <p>4 A. Yes.</p> <p>5 Q. To know that, you saw -- the same</p> <p>6 document that lists USM as a qualified bidder</p> <p>7 lists the 200,000 upfront deposit?</p> <p>8 A. Yes.</p> <p>9 Q. You also, by following that</p> <p>10 auction, you also knew they were the high</p> <p>11 bidder on five different licenses, right?</p> <p>12 A. Yes.</p> <p>13 Q. And let me show you what I'm</p> <p>14 marking Norman Exhibit 4.</p> <p>15 (Document marked Norman Exhibit 4</p> <p>16 for identification.)</p> <p>17 Q. Isn't this a facsimile transmittal</p> <p>18 sheet from you to Mark Hatten and David</p> <p>19 Kleeman dated December 15, 1998?</p> <p>20 A. Well, I can't say definitely</p> <p>21 because there is no fax number on here, plus</p> <p>22 it says total of pages 3, including the</p> <p>23 cover, and there are four, so I can't say</p> <p>24 definitely yes, but what's the question?</p> <p>25 Q. This is your document, right, you</p>	<p style="text-align: right;">Page 100</p> <p>1 J. Norman</p> <p>2 Q. At this point in time, you were the</p> <p>3 one that told Mr. Elkin that Mark Hatten and</p> <p>4 his company had an interest in buying,</p> <p>5 acquiring, investing in US Mobilcomm, right?</p> <p>6 A. Yes.</p> <p>7 Q. You acted as liaison between US</p> <p>8 Mobilcomm and Mark Hatten and his company?</p> <p>9 A. For the introduction, I did.</p> <p>10 Q. They must have asked you for some</p> <p>11 financial information, didn't they?</p> <p>12 A. I just put him in touch with Mr.</p> <p>13 Elkin.</p> <p>14 MR. EVETTS: Objection. Not</p> <p>15 responsive.</p> <p>16 Q. Did Mr. Hatten ask you for</p> <p>17 financial information on the company?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did you provide this financial</p> <p>20 information to Mr. Hatten on the company?</p> <p>21 A. I don't recall.</p> <p>22 Q. Look at the next page, it's the</p> <p>23 balance sheet for US Mobilcomm dated November</p> <p>24 16, 1998, is that right?</p> <p>25 A. The one that says draft on it?</p>
<p style="text-align: right;">Page 99</p> <p>1 J. Norman</p> <p>2 produced this document, right?</p> <p>3 A. I did.</p> <p>4 MR. FELICE: I can represent PFT is</p> <p>5 the plaintiff's production.</p> <p>6 Q. This is your own document from your</p> <p>7 own files representing your copy of something</p> <p>8 you sent to Mark Hatten, right?</p> <p>9 A. That's what I said. I can't tell</p> <p>10 you for sure that I did send it to him. If</p> <p>11 we produced it, I had it in my files. If you</p> <p>12 look on the top, I say, click here, type, I</p> <p>13 didn't finish it and there is no fax</p> <p>14 confirmation and no fax number on it and the</p> <p>15 page is wrong, so I can't say 100 percent</p> <p>16 yes, but let's assume --</p> <p>17 Q. Mr. Norman, you worked, after you</p> <p>18 left USM in late '96 or early 97, the person</p> <p>19 you went to work for is Mark Hatten?</p> <p>20 A. I did some consulting. I didn't go</p> <p>21 to work for him. Brief consulting for him.</p> <p>22 Q. At this point in time, you've lost,</p> <p>23 you know this, you lost the Centennial deal,</p> <p>24 right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 J. Norman</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. This came from your files?</p> <p>5 A. I assume so.</p> <p>6 Q. So this had to be provided to you</p> <p>7 at sometime around the date on that document,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Will you tell the jury how much</p> <p>11 cash US Mobilcomm has in both the checking</p> <p>12 and money market account at this point?</p> <p>13 A. According to this document, it has</p> <p>14 got 10,300.</p> <p>15 Q. Where in this document, by the way,</p> <p>16 does it make note that USM either owns some</p> <p>17 phase 2 licenses or has a \$200,000 deposit at</p> <p>18 the FCC?</p> <p>19 A. Nowhere on this page.</p> <p>20 Q. If you had been following USM on</p> <p>21 the FCC website and you know or you think it</p> <p>22 has \$200,000 at the FCC or by this time, has</p> <p>23 five licenses, why wouldn't that raise a red</p> <p>24 flag with you, where is that 200,000, where</p> <p>25 are those licenses?</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 106</p> <p>1 J. Norman</p> <p>2 speculation.</p> <p>3 A. I can't speculate on that.</p> <p>4 Q. Look --</p> <p>5 A. I certainly would have liked that</p> <p>6 telephone call. I would like that</p> <p>7 opportunity.</p> <p>8 Q. I happen to have a very detailed</p> <p>9 report on you, Mr. Norman, which includes</p> <p>10 your small claims judgments from clothing</p> <p>11 stores and God knows what else, gas</p> <p>12 companies, tax liens on your home.</p> <p>13 You're telling me you don't know</p> <p>14 for sure whether in the latter part of 1998,</p> <p>15 you had an extra \$50,000 laying around?</p> <p>16 A. I don't think that's the point.</p> <p>17 The point is whether I wanted to take the</p> <p>18 opportunity.</p> <p>19 When I first went into the venture,</p> <p>20 I didn't have the whole \$250,000 at that time</p> <p>21 either, but I took advantage of it and got</p> <p>22 that for the business opportunity.</p> <p>23 MR. EVETTS: Objection.</p> <p>24 Nonresponsive.</p> <p>25 Q. Do you know that Mr. Elkin, in the</p>	<p style="text-align: right;">Page 108</p> <p>1 J. Norman</p> <p>2 MR. FELICE: Objection as to form.</p> <p>3 A. Probably yes.</p> <p>4 Q. Probably yes?</p> <p>5 A. Yes.</p> <p>6 Q. August 1998?</p> <p>7 A. Yeah, I could have raised the cash.</p> <p>8 Q. I didn't ask you that.</p> <p>9 I want to know, did you have the</p> <p>10 cash?</p> <p>11 MR. FELICE: Objection as to form.</p> <p>12 A. I don't know. I would have to look</p> <p>13 back. This is a long time ago.</p> <p>14 Q. The two of you had been trying to,</p> <p>15 quote, raise the cash, as you just said, for</p> <p>16 years, so if you could have raised the cash,</p> <p>17 why didn't you?</p> <p>18 MR. FELICE: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. Why didn't we raise the cash?</p> <p>21 Q. Why didn't you raise it? You said</p> <p>22 you could have raised it.</p> <p>23 A. We did have a couple of potential</p> <p>24 companies that wanted to raise cash for us.</p> <p>25 Q. I can show you 50 attempts to raise</p>
<p style="text-align: right;">Page 107</p> <p>1 J. Norman</p> <p>2 months, really in the years leading up to</p> <p>3 this auction, had been trying to raise the</p> <p>4 money for US Mobilcomm to participate</p> <p>5 meaningfully in the phase 2 auctions, did you</p> <p>6 know that?</p> <p>7 A. I know we were both trying to raise</p> <p>8 the money.</p> <p>9 Q. At some point, Mr. Elkin had to</p> <p>10 decide, as the deadline is approaching, to</p> <p>11 put your money up or shut up. At some point,</p> <p>12 he has to say, nobody is going to come</p> <p>13 through, at some point if nobody comes up to</p> <p>14 the table, you have to take the matter in</p> <p>15 your own hands, right?</p> <p>16 MR. FELICE: Objection as to form.</p> <p>17 A. I can't answer for Mr. Elkin.</p> <p>18 Q. My point to you, it's a simple</p> <p>19 question, not whether you would have wanted</p> <p>20 the call, whether you would have wanted the</p> <p>21 opportunity, had a call come to you in August</p> <p>22 1998, if we're going to do this, I need your</p> <p>23 50,000 and I need it now, were you in the</p> <p>24 financial position to send that \$50,000 to</p> <p>25 the company?</p>	<p style="text-align: right;">Page 109</p> <p>1 J. Norman</p> <p>2 cash that Mr. Elkin engaged in, but my</p> <p>3 question is, you just said to me, I think I</p> <p>4 could have given the 50,000 because I believe</p> <p>5 I could have raised it. If you could have</p> <p>6 raised the money, why didn't you?</p> <p>7 MR. FELICE: Objection. Asked and</p> <p>8 answered.</p> <p>9 A. We weren't raising \$50,000 for the</p> <p>10 company, we were raising a couple of million</p> <p>11 dollars for the company and we had problems</p> <p>12 doing that and it turned out some of those</p> <p>13 problems with some of the people in New York</p> <p>14 that I talked to after the fact -- I got some</p> <p>15 feedback from numerous people that they</p> <p>16 didn't want to put money in because Mr. Elkin</p> <p>17 had a reputation of being a difficult person</p> <p>18 to deal with.</p> <p>19 MR. EVETTS: Objection.</p> <p>20 Nonresponsive.</p> <p>21 Q. You know, raising money for a</p> <p>22 privately held company always requires a</p> <p>23 certain connection with the founders, doesn't</p> <p>24 it?</p> <p>25 A. Yes.</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 114</p> <p>1 J. Norman</p> <p>2 that?</p> <p>3 A. That's his business, that's his own</p> <p>4 personal business and he has a right to do</p> <p>5 that and I -- you know, his personal money, I</p> <p>6 have nothing to say about it.</p> <p>7 Q. That's an interesting point. Let</p> <p>8 me ask you this...</p> <p>9 MR. EVETTS: Let's take a break.</p> <p>10 THE VIDEOGRAPHER: 10:07. Off the</p> <p>11 record. End of tape 1.</p> <p>12 (Recess.)</p> <p>13 THE VIDEOGRAPHER: 10:14. On the</p> <p>14 record. Beginning of tape 2.</p> <p>15 Q. You talk a lot in your complaint</p> <p>16 about what it means to be, quote, a qualified</p> <p>17 bidder for auction 18.</p> <p>18 Do you recall that?</p> <p>19 A. Yes.</p> <p>20 Q. And the fact that USM was a</p> <p>21 qualified bidder, right?</p> <p>22 A. Yes.</p> <p>23 Q. Do you understand whether the</p> <p>24 primary qualification, in accordance with the</p> <p>25 FCC guidelines for filling out an</p>	<p style="text-align: right;">Page 116</p> <p>1 J. Norman</p> <p>2 So my point is, if, in fact, USM</p> <p>3 qualified only by the grace of David Elkin</p> <p>4 because he put up his personal money, when he</p> <p>5 took away his personal money, USM would no</p> <p>6 longer qualify to bid at that auction, would</p> <p>7 they?</p> <p>8 MR. FELICE: Objection.</p> <p>9 Foundation.</p> <p>10 A. If there was no money there as a</p> <p>11 deposit, they wouldn't, no.</p> <p>12 Q. Let me get back to the point where</p> <p>13 you said it was his money, he could do what</p> <p>14 he wants to with it.</p> <p>15 Have you ever started a business</p> <p>16 from scratch yourself?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Where you were the sole</p> <p>19 shareholder?</p> <p>20 A. Yes.</p> <p>21 Q. And have you experienced, like many</p> <p>22 startup businesses, during that first year,</p> <p>23 it's hard to pay all the bills or as you</p> <p>24 start adding employees, it's hard to make</p> <p>25 payroll and all that good stuff?</p>
<p style="text-align: right;">Page 115</p> <p>1 J. Norman</p> <p>2 application, is putting up a deposit</p> <p>3 sufficient to cover the licenses you</p> <p>4 anticipate bidding on?</p> <p>5 A. Yes.</p> <p>6 Q. So the primary, quote, factor for</p> <p>7 US Mobilcomm was the ability to put up the</p> <p>8 upfront deposit, right?</p> <p>9 A. Right.</p> <p>10 Q. And so if, as you already said, if</p> <p>11 it turns out in this case, under the facts,</p> <p>12 that USM didn't put up the 200,000, it didn't</p> <p>13 have the 200,000, Mr. Elkin put up the</p> <p>14 200,000, regardless of what FCC things, USM</p> <p>15 wasn't qualified to bid at the auction,</p> <p>16 right?</p> <p>17 MR. FELICE: Objection.</p> <p>18 A. Say that again.</p> <p>19 Q. It's really simple. You said that</p> <p>20 if USM didn't have the money, Mr. Elkin</p> <p>21 didn't have any obligation to put it up,</p> <p>22 right, if he did put it up, just to hold</p> <p>23 their spot, he could change his mind and take</p> <p>24 it back, as you put it, it's his money, he</p> <p>25 could do what he wants to with it, right?</p>	<p style="text-align: right;">Page 117</p> <p>1 J. Norman</p> <p>2 A. Yes.</p> <p>3 Q. From time to time, have you just</p> <p>4 had to forego your own salary or compensation</p> <p>5 or, for that matter, put in money to make</p> <p>6 other people's payrolls?</p> <p>7 A. Yes.</p> <p>8 Q. And in that situation, what is it</p> <p>9 your expectation, let's just say, January 1st</p> <p>10 rolls around, not enough money in the bank to</p> <p>11 make payroll, I've heard about that a bunch</p> <p>12 of times in my past experience, not enough</p> <p>13 money to make payroll, you have to go write a</p> <p>14 check and put it in your company's bank</p> <p>15 account, \$10,000 to make that payroll.</p> <p>16 You've done that in the past?</p> <p>17 A. Yes.</p> <p>18 Q. What is your expectation when the</p> <p>19 company becomes better off, becomes more</p> <p>20 flush, a big sale or big receivable comes in,</p> <p>21 would you expect to be able to get back that</p> <p>22 \$10,000 you put in to cover the payroll?</p> <p>23 A. Hopefully, yes.</p> <p>24 Q. And would you expect that, even if</p> <p>25 you didn't enter into any kind of formal loan</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 174</p> <p>1 J. Norman</p> <p>2 opposed to, you're just saying you never</p> <p>3 talked about it?</p> <p>4 A. A concept and generalities, I'm not</p> <p>5 opposed to, no.</p> <p>6 Q. So as we sit here today, now that</p> <p>7 it's been 10 years since you've left, do you</p> <p>8 think David should be entitled to some sort</p> <p>9 of an adjustment for putting in an extra 10</p> <p>10 years into the company than you did?</p> <p>11 MR. FELICE: Objection.</p> <p>12 Foundation.</p> <p>13 A. No, I don't.</p> <p>14 Q. You don't?</p> <p>15 A. No, I don't.</p> <p>16 Q. I thought you just said yes.</p> <p>17 A. You asked me a hypothetical</p> <p>18 question in life, okay. You're asking me</p> <p>19 specific.</p> <p>20 Q. Telling me why, in this situation,</p> <p>21 putting in an additional 10 years isn't worth</p> <p>22 the same?</p> <p>23 A. Because, first of all, he never</p> <p>24 communicated so -- we were holding licenses.</p> <p>25 Okay. There is not a lot of work involved</p>	<p style="text-align: right;">Page 176</p> <p>1 J. Norman</p> <p>2 Q. Do you have any idea what the</p> <p>3 aggregate site rental fees were when you</p> <p>4 maxed out the number of licenses the company</p> <p>5 either owned or managed?</p> <p>6 A. I've got an idea.</p> <p>7 Q. What is it?</p> <p>8 A. Anywhere from a couple hundred to</p> <p>9 \$1,000 a month, maybe.</p> <p>10 Q. So how much was it a month to just</p> <p>11 keep up with your contractual obligations?</p> <p>12 A. It's hard to -- I can't sit here</p> <p>13 this second because some of the licensees</p> <p>14 were paying that amount themselves.</p> <p>15 Q. Let's throw out a number. If it</p> <p>16 was 30,000 a month to cover site rental fees</p> <p>17 for 50 licenses, plus your construction</p> <p>18 requirements, plus your subscriber</p> <p>19 requirements, do you have any idea what the</p> <p>20 high watermark was for USM subscriber</p> <p>21 revenues or revenues of any kind from</p> <p>22 operations?</p> <p>23 A. Anywhere from 60 to a hundred</p> <p>24 thousand annually.</p> <p>25 Q. Annually, so 5,000 to 8,000 a</p>
<p style="text-align: right;">Page 175</p> <p>1 J. Norman</p> <p>2 with that.</p> <p>3 Q. Mr. Norman, and --</p> <p>4 A. And Rick Shorin was getting paid</p> <p>5 out of the company costs to do a lot of the</p> <p>6 day to day stuff besides being a CFO.</p> <p>7 Q. You do know before you went out</p> <p>8 because this was your forte, you were the</p> <p>9 person responsible for aggregating the</p> <p>10 licenses?</p> <p>11 A. Uh-huh.</p> <p>12 Q. So you do know that as you</p> <p>13 aggregated these licenses, you made</p> <p>14 commitments to pay site rental fees, right?</p> <p>15 A. Right.</p> <p>16 Q. And you also know, under the SEC</p> <p>17 rules, there were deadlines to get the</p> <p>18 licenses constructed so they wouldn't be</p> <p>19 forfeited, you knew that, right?</p> <p>20 A. Yes.</p> <p>21 Q. You also knew there were FCC rules</p> <p>22 that required having subscribers on the</p> <p>23 system by certain periods or you would</p> <p>24 forfeit or lose the licenses?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 177</p> <p>1 J. Norman</p> <p>2 month?</p> <p>3 A. Yes.</p> <p>4 Q. If your site rental fees are 30,000</p> <p>5 a month, plus you've got to install a half</p> <p>6 million dollars worth of equipment, plus you</p> <p>7 have to continually work to bring subscribers</p> <p>8 and keep subscribers on the system so you</p> <p>9 don't forfeit everything you sunk all that</p> <p>10 money into, that's an ongoing separate</p> <p>11 operating business with ongoing financial</p> <p>12 obligations, isn't it?</p> <p>13 A. Yes, but I think you're mixing the</p> <p>14 time up on the build out and constructing on</p> <p>15 that.</p> <p>16 I believe when I left the company,</p> <p>17 most of that stuff was already done because</p> <p>18 we were involved with that, too, Tom and I.</p> <p>19 Q. But when the company --</p> <p>20 A. So --</p> <p>21 Q. When the company never manages to</p> <p>22 generate sufficient cash flow to pay even a</p> <p>23 fraction of its ongoing bills, who do you</p> <p>24 think has to deal with the creditors, the</p> <p>25 people that aren't being paid, the equipment</p>

45 (Pages 174 to 177)

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1 J. Norman
 2 to give you the courtesy.
 3 MR. FELICE: If you're not
 4 finished, it may not make sense for me
 5 to question him and if you are given the
 6 right to recall this witness, we will
 7 address it then. If not, we'll address
 8 it through other evidence. Thank you.
 9 THE VIDEOGRAPHER: This is the end
 10 of deposition of Jeff Norman and the
 11 time is 12:04 p.m. This is the end of
 12 tape No. 2.
 13 (Time noted: 12:04 p.m.)
 14
 15
 16 JEFFREY M. NORMAN
 17
 18 Subscribed and sworn to before me
 19 this ____ day of _____, 2006.
 20
 21 _____
 22
 23
 24
 25

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1
 2 **C E R T I F I C A T E**
 3 **STATE OF NEW YORK)**
 4 **: ss.**
 5 **COUNTY OF NEW YORK)**
 6
 7 I, LESLIE FAGIN, a Notary Public
 8 within and for the State of New York, do
 9 hereby certify:
 10 That JEFFREY M. NORMAN, the witness
 11 whose deposition is hereinbefore set
 12 forth, was duly sworn by me and that such
 13 deposition is a true record of the
 14 testimony given by the witness.
 15 I further certify that I am not
 16 related to any of the parties to this
 17 action by blood or marriage, and that I
 18 am in no way interested in the outcome of
 19 this matter.
 20 IN WITNESS WHEREOF, I have hereunto
 21 set my hand this 14th day of December,
 22 2006.
 23
 24 LESLIE FAGIN, RPR
 25

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1
 2 -----I N D E X-----
 3 WITNESS EXAMINATION BY PAGE
 4 JEFFREY M. NORMAN MR. EVETTS 6
 5
 6 -----EXHIBITS-----
 7 NORMAN FOR ID.
 8 1 45
 9 2 43
 10 3 54
 11 4 98
 12 5 130
 13 6 134
 14 7 134
 15 8 134
 16 9 143
 17 10 156
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